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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,698	09/12/2003	Julia Sarah Faircloth	PILOOI	7371

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EXAMINER

CONLEY, FREDRICK C

ART UNIT PAPER NUMBER

3673

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/661,698	Applicant(s) FAIRCLOTH ET AL.	
	Examiner FREDRICK C CONLEY	Art Unit 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-12,14-18,23-32 and 34-36 is/are rejected.
- 7) ☒ Claim(s) 13,19-22 and 33 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/16/05</u> . | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 25, 27, 29-31, and 35-36 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. pat. No. 6,434,769 to Koenig.

Claim 25, Koenig discloses a theme pillow assembly for concealing and revealing an item comprising:

- a rectangular framed pillow 202 comprising a first layer of material;
- a second layer of material connected to said first layer of material;
- cushioning medium between said first layer and said second layer (fig. 6);
- a cavity having an opening, said first layer of material including a front layer, a cavity sidewall perimeter layer and a cavity floor layer, said cavity sidewall perimeter layer being encircled by said cushioning medium said cavity opening and said cavity floor layer similarly sized and similarly shaped, said cavity opening and said cavity floor layer generally maintaining said size and shape;
- an item 204 removeably stationed in said cavity;
- a third layer of material 7 attached to said first layer of material, said third layer of material being a door covering at least a portion of said cavity opening, said third layer of material attached to pivotally open to an open position and pivotally close to a closed

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position, said third layer attached in between said opening of said cavity and an outer perimeter of said first layer of material; and,

wherein at least one of said first layer of material and said third layer of material bear indicia which together with said item indicate a theme (fig. 6).

Claim 27, further comprising a sound device (col. 3 lines 48-50).

Claim 29, wherein said first cavity floor surface is attached proximate to said back surface for preventing said first cavity sidewall perimeter surface and said first cavity floor surface from turning inside out.

Claim 30, wherein said outer perimeter of said cushioning member has an outline that is shaped to further visually indicate said illustrated theme (col. 3 lines 40-45).

Claim 31, wherein said cushioning member includes an outer perimeter surface, said outer perimeter surface connected to an outer perimeter of said front surface and connected to said back surface, said outer perimeter surface providing depth to said cushioning member (fig. 2A).

Claims 34-36, Koenig discloses a theme pillow assembly, comprising;

a cushioning member 202, said cushioning member including a cushioning medium, a front surface and a back surface, said front surface and said back surface being connected along an outer perimeter of said cushioning member, said cushioning medium being between said front surface and said back surface;

a first cavity, said first cavity recessed from said front surface into said cushioning member, said first cavity having a first cavity opening, a first cavity sidewall perimeter surface and a first cavity floor surface, said first cavity sidewall perimeter

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surface connected to said first cavity floor surface, and said first cavity sidewall perimeter surface encircled by said cushioning member;

at least one item 204 removeably situated in said first cavity;

a first door 7 connected to said front surface, and said first door openable to an open position for revealing at least a portion of said first cavity and closeable to a closed position over said first cavity for concealing said at least a portion of said first cavity and said at least one item situated in said first cavity;

wherein said cushioning member includes a shell, said shell housing said cushioning medium, and said shell comprising layers of fabric material, said first cavity floor surface on an exterior side of a first cavity floor layer of fabric material said back surface on an exterior side of a back layer of fabric material said first cavity floor layer having an interior side and said back layer having an interior side said first cavity layer interior side and said back layer interior side connected without said cushioning medium intervening; and,

wherein at least one of said cushioning member and said first door have indicia, said at least one item and said indicia together visually indicating an illustrated theme (fig. 6).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4-18, and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,434,769 to Koenig in view of U.S. Pat. No. 5,951,111 to Klimenko.

Claim 1, Koeng discloses theme pillow assembly for playing peek-a-boo hide and seek with at least one item, comprising:

a cushioning member 201, said cushioning member including a cushioning medium, a front surface and a back surface, said front surface and said back surface being connected along an outer perimeter of said cushioning member, said cushioning medium being between said front surface and said back surface;

a first cavity, said first cavity recessed from said front surface into said cushioning member, said first cavity having a first cavity opening of a predetermined dimension, a first cavity sidewall perimeter surface and a first cavity floor surface of a similar predetermined dimension, said first cavity sidewall perimeter surface connected to said first cavity floor surface (fig. 6),

and said first cavity sidewall perimeter surface encircled by said cushioning medium; at least one item removeably situated in said first cavity;

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a first door 7 connected to said front surface, and said first door being bendable and openable to an open position for revealing at least a portion of said first cavity and closeable to a closed position over said first cavity for concealing said at least a portion of said first cavity and said at least one item situated in said first cavity; and

wherein said first cavity opening generally maintains said predetermined dimension in said open position and in said closed position and said first cavity floor surface generally maintains said similar predetermined dimension in said open position and in said closed position; and,

wherein at least one of said cushioning member and said first door 7 have indicia (206,207), said at least one item and said indicia together visually indicating an illustrated theme. Koenig fails to disclose said first cavity sidewall perimeter surface billowing inward toward said first cavity. Klimenko discloses a cushion member having a cavity 31 wherein a first cavity sidewall perimeter surface billows in between a first cavity opening and first cavity floor surface said first cavity sidewall perimeter surface at least partially obscuring said first cavity floor surface when said at least one item is removeable situated in said first cavity and when said first cavity is empty (fig. 2). It would have been obvious for one having ordinary skill in the art at the time of the invention to construct the cavity sidewall as taught by Klimenko in order to provide an inflatable filler so the cushion member of Keonig can be quickly inflated for use and conveniently stored without occupying too much space when deflated.

Claim 2, wherein said at least one item includes a plush finger animal 204.

Klimenko fails to disclose a stuffed animal. It would have been obvious for one having



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ordinary skill in the art at the time of the invention to merely employ a stuffed animal since it is well known that stuffed animals and animal puppets are equivalent characters to provide amusement for a child.

Claim 4, further comprising a sound device, and where said sound device emits a sound that further indicates said illustrative theme (col. 3 lines 48-50).

Claim 5, Keonig discloses all of the Applicant's claimed limitations except for said first cavity opening having a circumference and where said first door has a larger circumference than said first cavity opening circumference so to overlay a portion of said front surface. It would have been obvious for one having ordinary skill in the art at the time of the invention to provide a cavity opening having a circumference with the door having a larger circumference than the cavity since changing the shape of the opening and the size of the door are considered obvious modifications to the shape and size of the cavity and door respectively.

Claim 6, wherein said outer perimeter of said cushioning member has a generally rectangular outline, said outline encircling a cushioning member frontal area, said first cavity opening encircling an opening area, and where said opening area is at least 18% of the size of said cushioning member frontal area (fig. 6).

Claim 7, wherein said cushioning member includes a shell, said shell housing said cushioning medium, and said shell comprising felt type fabric (col. 3 lines 42-44). It is well known that felt and quilt type fabrics are equivalent upholstery materials and it would have been obvious to provide a quilt type fabric for the shell in order to provide an alternate material for the pillow.



Claim 8, wherein said first cavity floor surface is attached proximate to said back surface for preventing said first cavity sidewall perimeter surface and said first cavity floor surface from turning inside out.

Claim 9, further including a securing means 8 for securing said first door in said closed position, and wherein said first door is connected to said front surface, said first door opening by bending and said first door generally conforming to said front surface in said closed position, said front surface being convexly contoured to outline an abdomen of a plush toy figure.

Claim 10, further comprising a second door 4 connected to said cushioning member.

Claim 11, wherein said first door and said second door conceal said first cavity when said first door and second door are in closed position.

Claim 12, further comprising a third door (4a), said third door underlying said first door, taken directly from a rear view perspective of the pillow 1, when said first door is in said closed position.

Claim 14, wherein said outer perimeter of said cushioning member has an outline that is shaped to further visually indicate said illustrated theme (col. 3 lines 40-45).

Claim 15, wherein said cushioning member includes an outer perimeter surface, said outer perimeter surface connected to an outer perimeter of said front surface and connected to said back surface, said outer perimeter surface providing depth to said cushioning member (fig. 2A).

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Claims 16-18, Koenig discloses all of the Applicant's claimed limitations except for comprising a second cavity and second door. It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a second cavity and second door since it is generally recognized that duplication of parts is an obvious modification in the art.

Claim 23, Koeng discloses theme pillow assembly for playing peek-a-boo hide and seek with at least one item, comprising:

a cushioning member 201, said cushioning member including a cushioning medium, a front surface and a back surface, said front surface and said back surface being connected along an outer perimeter of said cushioning member, said cushioning medium being between said front surface and said back surface;

a first cavity, said first cavity recessed from said front surface into said cushioning member, said first cavity having a first cavity opening of a predetermined dimension, a first cavity sidewall perimeter surface and a first cavity floor surface of a similar predetermined dimension, said first cavity sidewall perimeter surface connected to said first cavity floor surface (fig. 6),

and said first cavity sidewall perimeter surface encircled by said cushioning medium; at least one item removeably situated in said first cavity;

a first door 7 connected to said front surface, and said first door being bendable and openable to an open position for revealing at least a portion of said first cavity and closeable to a closed position over said first cavity for concealing said at least a portion of said first cavity and said at least one item situated in said first cavity; and

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wherein said first cavity opening generally maintains said predetermined dimension in said open position and in said closed position and said first cavity floor surface generally maintains said similar predetermined dimension in said open position and in said closed position; and,

wherein at least one of said cushioning member and said first door 7 have indicia (206,207), said at least one item and said indicia together visually indicating an illustrated theme. Koenig fails to disclose said first cavity sidewall perimeter surface billowing inward toward said first cavity. Klimenko discloses a cushion member having a cavity 31 wherein a first cavity sidewall perimeter surface billows in between a first cavity opening and first cavity floor surface said first cavity sidewall perimeter surface at least partially obscuring said first cavity floor surface when said at least one item is removeable situated in said first cavity and when said first cavity is empty (fig. 2). It would have been obvious for one having ordinary skill in the art at the time of the invention to construct the cavity sidewall as taught by Klimenko in order to provide an inflatable filler so the cushion member of Keonig can be quickly inflated for use and conveniently stored without occupying too much space when deflated. Keonig discloses all of the Applicant's claimed limitations except for said first cavity opening having a circumference and where said first door has a larger circumference than said first cavity opening circumference so to overlay a portion of said front surface. It would have been obvious for one having ordinary skill in the art at the time of the invention to provide a cavity opening having a circumference with the door having a larger circumference than the cavity since changing the shape of the opening and the size of

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the door are considered obvious modifications to the shape and size of the cavity and door respectively.

Claim 24, in combination with a removeable item 204, and where at least a portion of said first surface and said first door have indicia which together with said item visually illustrate a theme (fig. 6).

Claims 26, 28, 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,434,769 to Koenig.

Claim 26, wherein said at least one item includes a plush finger animal 204. <sup>Koenig</sup>~~Klimenko~~ fails to disclose a stuffed animal. It would have been obvious for one having ordinary skill in the art at the time of the invention to merely employ a stuffed animal since it is well known that stuffed animals and animal puppets are equivalent characters to provide amusement for a child.

Claim 28, Koenig discloses all of the Applicant's claimed limitations except for said first cavity opening having a circumference and where said first door has a larger circumference than said first cavity opening circumference so to overlay a portion of said front surface. It would have been obvious for one having ordinary skill in the art at the time of the invention to provide a cavity opening having a circumference with the door having a larger circumference than the cavity since changing the shape of the opening and the size of the door are considered obvious modifications to the shape and size of the cavity and door respectively.

Claim 32, Koenig discloses all of the Applicant's claimed limitations except for comprising a second cavity and second door. It would have been obvious for one

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having ordinary skill in the art at the time of the invention to employ a second cavity and second door since it is generally recognized that duplication of parts is an obvious modification in the art.

***Allowable Subject Matter***

Claims 13, 19-22, and 33 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments with respect to claims 1-2 and 4-36 have been considered but are moot in view of the new ground(s) of rejection.

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***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

  
HEATHER SHACKELFORD  
SUPERVISORY PATENT EXAMINER  
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